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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/754,118	01/05/2001	Marlo Donald Neuleib	8528-004-64	3274

7590 10/08/2004

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EXAMINER

NGUYEN, CHI Q

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/754,118

Applicant(s)

NEULEIB, MARLO DONALD

Examiner

Chi Q Nguyen

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 June 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-15, 17, 18 and 20-23 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-8, 10-14, 17, 18 and 20-23 is/are rejected.
- 7) Claim(s) 9 and 15 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 December 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

- 4) Interview Summary (PTO-413) Paper No(s). _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: exhibit A.

DETAILED ACTION

The Office action is in response to the applicant's amendment filed on 2/22/04.

Claim Objections

Claim 23 is objected to because of the following informalities: the applicant is advised to remove "t" on line 4. Appropriate correction is required.

Claims 1, 6, 8, 11-14, 17-18, 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Matich (US 2,708,543).

Matich teaches a rubber grip roof ladder comprising a length of a connecting material 12 is non-skid rubber (col. 1, line 24), a plurality of steps 26 attached to the connecting material 12, the steps 26 being spaced apart and parallel by a distance sufficient to allow an adult to kneel between neighboring steps 26; the step comprises a toehold portion T (see attached drawing fig. 1) and a base portion 32, 34 attached to the connecting material 12, the toehold portion T defined by an upper generally planar support surface U for engaging a portion of a user's foot, an opposing lower surface L, and an edge surface 28 extending there between wherein the upper generally planar support surface U is disposed substantially perpendicular to the base portion 32, 34, a depression 54 serves as a handle having hollow opening 54, a keyhole 62, a lifeline 80 (figs. 1-7).

Claims 2-5, 7, 10, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matich '543.

Matich teaches a rubber grip roof ladder comprising a length of a connecting material 12 is non-skid rubber (col. 1, line 24), a plurality of steps 26 attached to the connecting material 12, the steps 26 being spaced apart and parallel by a distance sufficient to allow an adult to kneel between neighboring steps 26; the step comprises a toehold portion T (see attached drawing fig. 1) and a base portion 32, 34 attached to the connecting material 12, the toehold portion T defined by an upper generally planar support surface U for engaging a portion of a user's foot, an opposing lower surface L, and an edge surface 28 extending there between wherein the upper generally planar support surface U is disposed substantially perpendicular to the base portion 32, 34, a depression 54 serves as a handle having hollow opening 54, a keyhole 62, a lifeline 80 (figs. 1-7). Matich does not teach expressly the steps are spaced apart by approximately 20-36", the connecting material is approximately 10-36" wide, and is nylon 6000 pound seat belt webbing, and nylon 900-1,000 denier. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select the specific dimension for the steps, the connecting material, since it has been held to be within the general skill of a worker in the art to select a known material and cutting down to the desirable dimensions on the basis of its suitability for the intended use as a matter of obvious design choice.

Allowable Subject Matter

Claims 9 and 15 were previously objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 6/22/04 have been fully considered but they are not persuasive. The examiner does not agree with the applicant's argument that Matich's disclosure cannot be considered either an upper surface or a support surface when the Matich's ladder being connected to a roof because: 1) The surface labeled by U is corresponding to the applicant's upper planar surface 131a serves as a foot engaging support. 2) And the applicant's argument with regards to the Matich's ladder system does not provide toeholds that are spaced sufficiently far enough apart to allow a worker to kneel between successive or neighboring, toeholds would have been considered as an obvious matter of design choice base on desired use and the claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

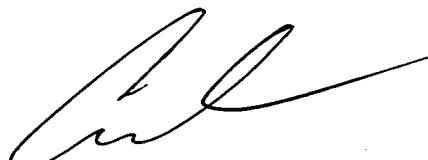
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (703) 605-1224, Mon-Thu (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (703) 308-0839. The fax number for the organization where this application or proceeding assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.


CQN
9/27/04



Carl D. Friedman
Supervisory Patent Examiner
Group 3600

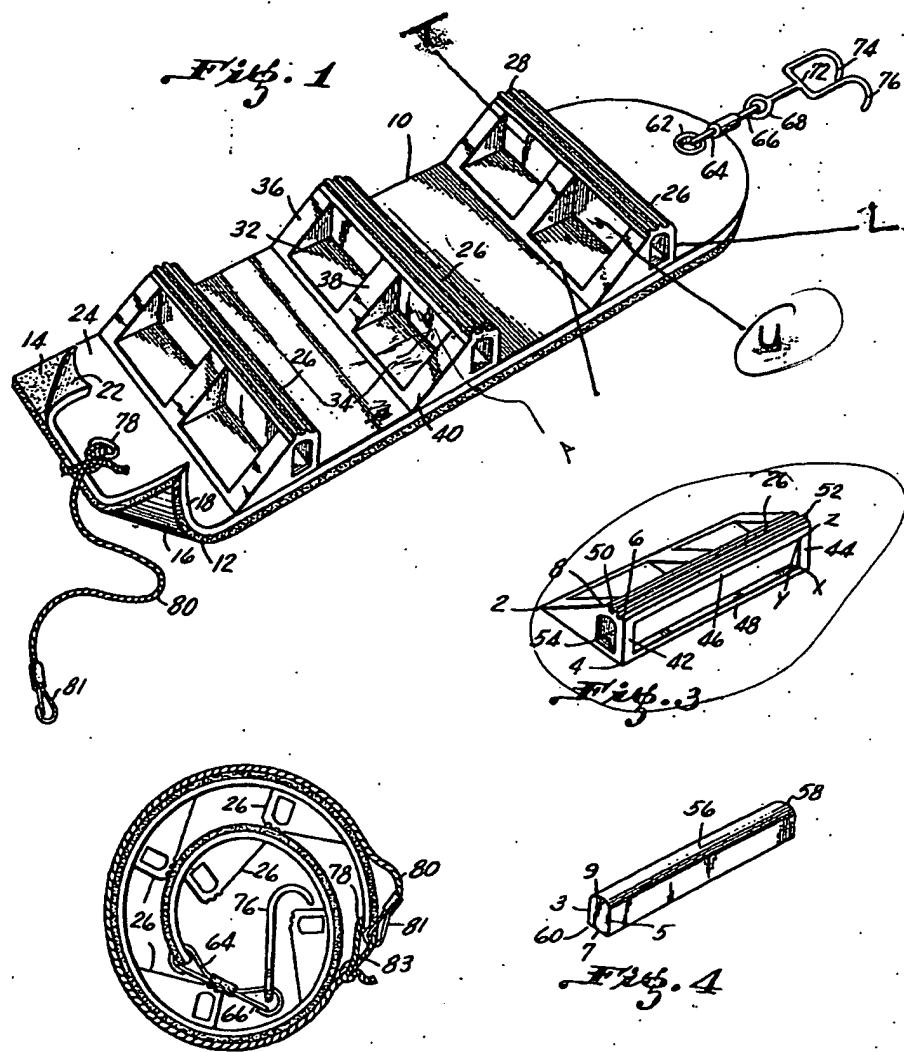
May 17, 1955

J. MATICH
RUBBER GRIP ROOF LADDER

2,708,543

Filed July 13, 1953

2 Sheets-Sheet 1



INVENTOR

John Matich

BY

ATTORNEY

Exhibit A